IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7350 OF 2006

WITH

WRIT PETITION NO.7803 OF 2006

WRIT PETITION NO.7350 OF 2006

Nurunisa Yakub Baig
& Ors. .. Petitioners.

vs.

Sherbanu Yakub Baig
& Ors. . .. Respondents.

Mr. K.B. Dighe i/by Vishal S. Khanavkar
for petitioners.
Mr. Rajiv Patil for Respondent Nos. 1 to 5.

WRIT PETITION NO.7803 OF 2006

Sherbano Yakub Beig
& Ors. .. Petitioners.

vs.

Naseema Yakub Beig
& Ors. . .. Respondents.

Mr. Rajiv Patil for petitioners.
Mr. K.B. Dighe i/by Vishal S. Khanavkar

for respondents.

CORAM : A.P. DESHPANDE, J.

DATE : 14th December, 2006.

P.C.

. The writ petitioners in Writ Petition No. 7803 of 2006 have applied for obtaining the succession certificate in the Court of Civil Judge, Senior Division, Panvel by filing an Inquiry Application No 268 of 2001. Since then the application is pending and parties have approached this court repeatedly which has resulted in undue delay in decision of the application. In the earlier round of litigation, this court has directed the disposal of the matter expeditiously but on account of non-cooperation by the writ petitioners in Writ Petition No. 7803 of 2006, according to the trial court, the matter could not be proceeded further. By an order dated 17.7.2006 the court after observing that repeatedly the applicant is seeking adjournments by remaining absent on the pretext that he has gone to the High Court and on the said date as well similar application was made which was rejected by the trial court. By an order dated 17.7.2006 the trial court has closed the evidence of the applicant by recording that his cross-examination is closed. What is sought to be

conveyed by the order dated 17.7.2006 is that on account of the deliberate non-availability of the applicant the evidence cannot proceed further. Hence, the cross-examination is closed. The obvious effect of the said order would have been rejecting the evidence of the applicant recorded prior to the passing of the order dated 17.7.2006. As there was an ambiguity in the order dated 17.7.2006 the writ petitioner in writ petition no. 7350 of 2006 moved an application purportedly under Section 152 of the Civil Procedure Code but instead of clarifying the order as prayed by the petitioner in this petition, the trial court reviewed the earlier order and granted one more opportunity to the applicant to make himself available for cross-examination. The said order is dated 7.10.2006. No doubt, the intention behind passing the order dated 7.10.2006 is to seek a decision on merit of the matter. The intention behind passing of the order cannot be faulted. However, what is relevant to note is that the order dated 7.10.2006 has been passed on an application moved by the present petitioners under section 152 seeking clarification of the order dated 17.7.2006 which is wholly in favour of the petitioner. It would have been understandable had the trial court passed an order dated 7.10.2006 on a prayer made by the original applicants but it is improper to have passed the order dated 7.10.2006 on an application moved by the petitioner in writ

petition no. 7350 of 2006. The matter does not rest there. The earlier order dated 17.7.2006 is challenged by the original applicant who is petitioner in writ petition no. 7803 of 2006 and the petitioner is seeking in substance, the same relief that had been granted by the trial court by an order dated 7.10.2006.

2. Having regard to the dispute involved in these writ petitions, I am of the considered view that the Civil Inquiry Application No. 268 of 2001 need to be expeditiously heard and disposed of. The learned counsel appearing for the original applicant (petitioner in writ petition no. 7803 of 2006) assures this Court that no adjournment will be sought hereafter by his client. Further, a joint request is made by the learned advocates appearing for the respective parties that the matter may be heard by the trial court day to day so that an early decision could be reached without causing much inconvenience to the parties.

3. As the impugned order in writ petition no. 7350 of 2006 seeks to achieve an objective of decision on merits of the matter, I decline to interfere with the same. In so far as the impugned order in writ petition no. 7308 of 2006 is concerned, the same has really merged in the impugned order in writ petition no. 7350 of 2006

dated 7.10.2006. In view of my declining to interfere with the impugned order dated 7.10.2006 which sets aside the order dated 17.7.2006, nothing survives for adjudication in writ petition no. 7803 of 2006. Having regard to the totality of the facts and circumstances, I direct the trial Court to permit the original applicant (petitioner in writ petition no. 7803 of 2006) to make himself available for cross-examination by the non-applicants. I am informed at the bar that the matter is now fixed before the trial court on 15.1.2007. Parties undertake to appear before the trial court on 15.1.2007. The trial court shall proceed to hear the application on merit and as far as possible on day to day basis, so that an early decision could be reached.

(A.P. Deshpande, J.)